

DECISION



Billard
118539
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-207064

DATE: June 1, 1982

MATTER OF: Wahl Clipper Corporation

DIGEST:

Protest to GAO filed more than 10 working days after protester's receipt of contracting agency's denial of protest is untimely and will not be considered on merits.

Wahl Clipper Corporation protests the award of a contract on December 28, 1981, to Wall Lenk Corporation for cordless soldering irons under Defense General Supply Center solicitation No. DLA 400-82-R-0422. Wahl contends that the product contracted for does not meet the agency's specifications.

We will not consider the merits of the protest because it was not timely filed in accordance with our Bid Protest Procedures, 4 C.F.R. part 20 (1981). Under section 20.2(a) thereof, all participants in Federal procurements are advised that:

"* * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 working days of formal notification of * * * initial adverse agency action will be considered * * *."

Wahl was advised of the award to Wall Lenk by letter of January 11, 1982. By letter of January 19, 1982, Wahl filed a protest of the award with the contracting officer, who denied it by letter of February 8, 1982. Even though the contracting officer advised Wahl that it could protest further to our Office, its protest was not filed with our Office until April 9, 1982, approximately two months later. That filing is clearly not within 10 working days of notification of initial adverse agency action, Wahl's receipt of the contracting officer's February 8 letter.

Wahl argues that it would be unfair for us to dismiss its protest as untimely, because the firm was not conversant with the "technical regulations" of our Office. It regards the contracting agency's recommendation that we dismiss the protest as untimely as an "excuse" for not examining the substantive issue Wahl has raised.

While Wahl's unawareness of our procedures may have contributed to its failure to submit a timely protest, our Bid Protest Procedures have been published in the Federal Register at 40 Fed. Reg. 17979 (1975) and protesters are charged with constructive notice of their contents. Elm State Electronics, Inc., B-193746, January 26, 1979, 79-1 CPD 58.

Wahl is mistaken in its perception that the application of the untimeliness rule is simply an excuse for avoiding the merits of its case. As we stated in an earlier decision in which the same contention was made:

"Our timeliness requirements are not a means of disregarding the merits of a valid protest or improper procurement practices, as Tate suggests. In this regard, we have stated that protests are serious matters, which warrant the immediate and timely attention of the protester, interested parties, the procuring activity and our Office. At stake are not only the rights and interests of the protester, but those of the procuring activity and other interested parties. Effective and equitable procedural standards are necessary so that the parties have a fair opportunity to present their cases and protests can be resolved in a reasonably speedy manner. The timeliness rules are intended to provide for expeditious consideration of objections to procurement actions without unduly burdening and delaying the procurement process and, at the same time, to permit us to decide the matter while it is practicable to take effective action with respect to the procurement where the circumstances warrant.

"Our Bid Protest Procedures establish a process to insure fair and prompt resolution of protests. Therefore, the timeliness requirements for the filing of protests * * * must be and are strictly construed by our Office. Department of Commerce, International Computaprint Corporation, B-190203, August 2, 1978, 78-2 CPD 84."

Tate Engineering, Inc.,--Reconsideration, B-193904, April 12,
1979, 79-1 CPD 262.

The protest is dismissed.

Harry R. Van Cleve ..
Harry R. Van Cleve
Acting General Counsel